

ARKANSAS SUPREME COURT

No. CR 09-464

BRIAN D. HIGGINS
Petitioner

v.

HON. L.T. SIMES, II,
CIRCUIT JUDGE
Respondent

Opinion Delivered June 4, 2009

PRO SE PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF
ST. FRANCIS COUNTY, CR 94-104,
CR 92-273]

PETITION DENIED

PER CURIAM

On May 1, 2009, petitioner Brian H. Higgins filed the instant pro se petition for writ of mandamus that concerns a petition to correct sentence pursuant to Arkansas Code Annotated § 16-90-111 (Supp. 2003) filed by petitioner in 2005 in the Circuit Court of St. Francis County, a part of the First Judicial Circuit. Petitioner asserts that the petition to correct sentence was assigned to Judge Harvey Yates and that Judge Yates held a hearing on it and granted the petition, but no order was ever entered reflecting the ruling. He now seeks a writ to compel the Honorable L. T. Simes, Circuit Judge, to order a transcript of the hearing to “confirm the order” or hold a second hearing on the petition and release him from custody.

Judge Simes responded to the mandamus petition, noting that Judge Yates retired from the bench on December 31, 2008, and averring that petitioner’s case has not been assigned to his court. As the petition is not assigned to him, he asks that this court deny the petition inasmuch as he is not

the proper respondent.¹

It is the responsibility of the petitioner to name the correct respondent in a mandamus action. As Judge Simes has informed this court that the petition to correct sentence was not assigned to his court, the petition for writ of mandamus is denied.

Petition denied.

¹Petitioner tendered a response to the response filed by Judge Simes in which he contends that Judge Simes is the only circuit judge assigned to the court in which his petition to correct sentence was filed. There are, however, four other judges sitting in the First Judicial Circuit.